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OCT 20 2014

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF FIDELITY EXPLORATION & PRODUCTION COMPANY FOR AN ORDER MODIFYING THE SERIES OF CAUSE NO. 196 ORDERS AND AUTHORIZING THE FLARING OF GAS IN EXCESS OF THE AMOUNTS ALLOWED UNDER UTAH ADMIN. CODE RULE (R649-3-201.1) ON A UNIT-WIDE BASIS FOR THE CANE CREEK FEDERAL EXPLORATORY UNIT, LOCATED IN PORTIONS OF TOWNSHIPS 25 AND 26 SOUTH, RANGES 18 THROUGH 20 EAST, SLM, GRAND AND SAN JUAN COUNTIES, UTAH

**SECOND SUPPLEMENTAL
REQUEST TO EXTEND
FLARING AUTHORIZATION**

Docket No. 2013-011

Cause No. 196-44

COMES NOW, Fidelity Exploration & Production Company ("Fidelity"), acting by and through its attorneys, MacDonald & Miller Mineral Legal Services, PLLC, and pursuant to Utah Code Ann. §40-6-5(3)(f) and Utah Admin. Code Rules R641-105-300 and R649-3-20(5), and hereby respectfully requests the Board of Oil, Gas and Mining (the "Board") to extend its authorization under the Board's Order entered on June 13, 2014 in the captioned cause (the "Supplemental Order") for Fidelity to flare associated gas produced from wells within the Cane Creek Federal Exploratory Unit (the "Unit") for an additional three (3) month period (through March 31, 2015) or the completion, commissioning and placing into permanent service of the Dead Horse Lateral Pipeline and Processing Plant and connection of individual wells through the gas gathering

system, whichever occurs first, maintaining the existing limitations on the amount of gas flared to 4,000 MCFPD on a Unit-wide basis and to 775 MCFPD for any one well.

In support of this Motion, Fidelity respectfully states and represents:

1. Fidelity is a Delaware corporation in good standing with its principal place of business in Denver, Colorado. It is an indirect subsidiary of MDU Resources Group, Inc. Fidelity is duly qualified to conduct business in the State of Utah, and is fully and appropriately bonded with all relevant Federal and State of Utah agencies.

2. The Unit, administered by the Bureau of Land Management ("BLM"), was approved effective April 15, 2002 and is currently comprised of the following Grand and San Juan Counties, Utah lands:

Township 25 South, Range 18 East, SLM

Sections 1-16 inclusive: All
Sections 21-24 inclusive: All

Township 25 South, Range 19 East, SLM

Sections 6-9 inclusive: All
Sections 14-36 inclusive: All

Township 26 South, Range 19 East, SLM

Sections 1-3 inclusive: All
Sections 10-15 inclusive: All
Sections 22-27 inclusive: All
Sections 34-36 inclusive: All

Township 26 South, Range 20 East, SLM

Sections 5-8 inclusive: All
Sections 17-21 inclusive: All
Sections 28-33 inclusive: All

(containing 53,474.19 acres)

There currently are three Cane Creek participating areas within the Unit. Fidelity currently serves as Unit Operator.

3. The oil and gas within the Unit Area is approximately 90% Federally owned, with the remaining 10% owned by the State of Utah.

4. Pursuant to the Supplemental Order, the Board authorizes Fidelity or its successor(s) as operator of the Cane Creek Unit, to flare gas on a Unit-wide basis through December 31, 2014, or the completion, commissioning and placing into permanent service of the Dead Horse Lateral Pipeline and Processing Plant and connection of individual wells through the gas gather system, whichever occurs first, provided:

- a) the aggregate amount flared shall not exceed 4,000 MCFPD; and
- b) the amount flared from any one well shall not exceed 775 MCFPD.

The Board also expressly retained jurisdiction over this Cause.

5. The Supplemental Order was, in large part, predicated upon the following Findings of Fact made by the Board:

a) Findings of Fact No. 7:

However, additional and unforeseen NEPA analysis relating to gas gathering will now delay placing the Pipeline and Plant into service until the fall of 2014 and as possibly late as December 31, 2014. Since July 2011, Fidelity had been informed by the BLM and had proceeded on the basis that gathering installed in or adjacent to existing roads had been adequately addressed in the Big Flats Nine-Well Environmental Assessment (issued in July, 2011), would not have to be included in the Right-of-Way Amendment Environmental Assessment, and could be authorized by sundry notice filing and approval. However, on March 10, 2014, the BLM instead notified Fidelity that an additional separate NEPA analysis would be required for the gathering system, which is currently ongoing. At the hearing, the BLM expressed confidence that a final decision on the Gathering System Environmental Assessment would be made by October 1, 2014.

b) Findings of Fact No. 10:

Fidelity has been diligent in its construction of the Pipeline and Plant and, with its [*sic*, their] construction nearly complete, they remain the only practical viable alternatives to eliminate the need for flaring.

6. As reflected on Exhibit "11-3" admitted into evidence at the May 28, 2014 Hearing upon which the Existing Order was issued, an October 1, 2014 BLM approval date for the Gathering System Environmental Assessment ("Gathering EA") constituted a "worse-case" scenario which would push Fidelity's estimated completion date to its very limit (December 31, 2014).

7. The BLM, by Letter dated August 6, 2014 and pursuant to NTL-4A, granted Fidelity authority to flare in accordance with the terms and conditions of the Supplemental Order.

8. Since entry of the Supplemental Order, the following chronology concerning the gathering system, pipeline and plant construction has occurred:

- June 19, 2014 - Moab BLM Field Office ("FO") Manager decides to include a new alternative in the Gathering EA to align with BLM Best Management Practice ("BMP") guidance (follow and co-locate pipeline along existing roads, bury lines to limit visibility, etc.). Fidelity followed BLM BMP guidance for Fidelity's original sundry submittal on January 9, 2014, which BLM determined was inadequate. This BLM decision will delay gathering approval another two-four weeks. Fidelity has already committed significant dollars toward pipe costs for the proposed gathering alignment (portions above ground), and it has been suggested to Fidelity that the Moab FO Manager is seriously considering approval of a new alternative to bury 100% of the gathering lines.
- August 8, 2014 - BLM posts the gathering project description on the ENBB with the intent that legal notice would be published by August 13 and public comment would end on August 27th.
- August 14, 2014 - Legal notice is published in the Moab Independent Times requesting public comment on the Gathering EA.
- August 28, 2014 - Although the public comment period has ended, the Moab FO Manager has decided to allow several groups, including SUWA, to submit comments until September 3rd. Due to the limited time line, Fidelity strongly protests the arbitrary extension and lack of a "hard" comment period deadline and requests that any comments submitted post deadline not be considered.

- September 3, 2014 - SUWA submits comments although the attachments and appendices associated with the comment letter are not ready and will be submitted at a later date.
- September 23, 2014 - Two additional action alternatives are again added to the Gathering EA. BLM is still suggesting that the October 1st deadline will be met. Fidelity still has no indication which alternative will be selected.
- September 25, 2014 - During the weekly BLM/Fidelity update call, BLM reveals that a hybrid alternative will be selected. The only component selected from Fidelity's proposed alternative (Alternative A) is the combination surface lay/buried scenario for Gemini Bridges Road. The remaining pipeline will be 100% buried as described in BLM's Alternative D. Also BLM chose to include Alternative C and upgrade an existing Class D road to avoid Horse Thief Campground (potentially destroying scenic canyon 4x4 opportunities with high disturbance costs) rather than utilize an existing seismic road with little cost and disturbance, as requested in Fidelity's proposed Alternative A. BLM's decision will increase Fidelity's material and construction costs by \$200,000.
- September 30, 2014 - Fidelity obtains a copy of the draft Decision Record and Conditions of Approval ("COA's"). Several COA's in the document could potentially delay construction to seven key producing wells along Gemini Bridges Road and Long Canyon Road. The conditions stipulate that Fidelity would need to notify recreation permittees in these areas a minimum of three weeks (for gathering road crossings) to six weeks (for pipeline construction adjacent to these roads) prior to the initiation of construction activities. Apparently the notification is so that alternate access arrangements can be made by these groups. BLM made a commitment to the Board that an October 1st decision would be met. As is, Fidelity is committing multiple construction crews to the project and will be hard-pressed to complete the gathering system by year's end, when our flaring exemption again expires. Fidelity is concerned that BLM has applied COA's that could significantly delay construction of this beneficial use pipeline.

- October 2, 2014 - Fidelity is notified that the Decision Record for the Gathering EA has been signed and approval to construct the gathering line network is granted. BLM has removed the six week notification requirement. However, BLM has included the requirement of a new Compliance Monitoring Plan for construction activities and a three-week notification to recreation permittees. A draft of the plan has been passed on to Fidelity for review; the plan appears geared toward FERC regulated pipelines and is very complex for a gathering project of this size and overly restrictive toward Fidelity's involvement and ability to address compliance issues on the fly.
- October 7, 2014 - Pre-construction meeting for gathering activities is confirmed and scheduled with BLM for Tuesday, October 14th.
- October 7, 2014 - Three-week notification letters are submitted to the 321 recreation permittees, as provided by BLM.
- October 8, 2014 - BLM chooses not to utilize the Compliance Monitoring Plan ("CMP") implemented for the Pipeline and provides a CMP template that appears overly complex and restrictive. BLM does insist that they would like a jointly approved document to work from. Fidelity provides BLM a draft version with requested changes.
- October 10, 2014 - BLM will not adopt most of Fidelity's changes to the document although COA's specify that it would be a jointly approved document. BLM is requesting a CMP template that far exceeds the scope and scale of the Gathering EA Decision Record and COA's.
- October 14, 2014 - Fidelity, BLM, Grand County, pipeline construction contractor(s) and support consultants attend the gas gathering preconstruction kick-off meeting. COA's, Applicant Committed Project Design Features and Environmental Protection Measures contained in the Gathering EA Decision Record are reviewed and evaluated as a group. Fidelity provides BLM with a

revised CMP that is simplified and meets the intent of the Decision Record.

- October 16, 2014 - Fidelity and BLM resolve CMP issues and finalize the agreement. Construction activities are set to begin Monday, October 20th.

The Pipeline is ready to be hydrotested but is awaiting BLM approval of the hydrotesting procedure. Instrumentation and electrical work are still in progress on the Booster and the Plant. The Interconnect is in progress; spools have been fabricated and it is currently prepping to blow down 16-in. The main Pipeline and the Plant, which will be completed by December 31, 2014, cannot be commissioned and placed into permanent service without the gathering lines in place.

9. BLM's late approval of the Gathering EA with the unexpected conditions will cause further delay in completion of the gathering lines and consequently in the commissioning and placing into service of the main Pipeline and Plant beyond the current authorized flaring date of December 31, 2014. Fidelity estimates such commissioning and placing into service may now not occur until as late as March 31, 2015. As a consequence, Fidelity requires an extension of the authorization to flare until that time.

10. Since entry of the Supplemental Order, Fidelity has flared all gas within the set limitations, and estimates, even with additional planned wells, the existing limitations will be sufficient through to the requested March 31, 2015 extension.

11. Fidelity will continue to take all steps required under State and Federal regulation for the protection of the health, safety and welfare of the general public.

12. Presuming the relief requested herein is granted, Fidelity will file a conforming NTL-4A request with the BLM if and as necessary.

13. Fidelity believes and therefore alleges that granting of this Supplemental Request will be in furtherance of the public policies of this State to promote greater recovery of oil without waste and with protection of the correlative rights of all affected owners, and is just and reasonable under the circumstances.

14. Fidelity will, in accordance with Board rules, timely submit exhibits and present testimony in support of these allegations.

15. Fidelity will separately file a certificate of mailing listing all parties known to it, based on a search of the respective BLM, TLA and Grand and San Juan County realty records and the records of the Division, whose "legally protected interests" will be affected by this request. There are no respondents or adverse parties known at this time to Fidelity.

WHEREFORE, Fidelity respectfully requests:

1. That this matter be set for hearing on December 10, 2014;
2. That notice of such hearing be given as provided by law; and

3. That, upon sufficient evidence produced and testimony given at the hearing, the Board grant this Supplemental Request and issue an order:

- a) Extending the authorization under the Supplemental Order for Fidelity or its successor(s) as operator of the Cane Creek Federal Exploratory Unit, to flare gas on a Unit-wide basis, with an aggregate rate limitation of 4,000 MCFPD and an individual well rate limitation of 775 MCFPD, through March 31, 2015 or the completion, commissioning and placing into permanent service of the Dead Horse Lateral Pipeline and Processing Plant and connection of individual wells through the gas gathering system, whichever occurs first;
- b) Making such findings and orders in connection with this request as it deems necessary; and
- c) Providing for such other and further relief as may be just and equitable under the circumstances.

Respectfully submitted this 20th day of October, 2014.

**MACDONALD & MILLER MINERAL
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